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(148)

HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPUR

Writ Petition No.2454 of 2003

Saiyad Shoukat Ali and another
-Versus-
Smt. Tijia Bai and others

ORDER post for 2nd September, 2003.

Sd/-
L.C. Bhadoo
Judge

A.F.R.

(149)

HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPUR

Writ Petition No.2454 of 2003

PETITIONERS:

1. Saiyad Shoukat Ali,
S/o. Saiyad Azmat Ali,
aged about 45 years.

2. Smt. Anjum Zarin, W/oSaiyad Shoukat Ali, aged about 40 years
Both residents of Masanganj, Bilaspur, Tehsil and District Bilaspur (C.G.).

Versus

RESPONDENTS:

1. Smt. Tijia Bai, W/o Nandlal, aged about 75 years, Caste Satnami R/o Village Umaria, Tehsil & Mungeli, District : Bilaspur (C.G.).
2. Galla Seth, S/o Limbudas Suryavanshi, aged about 55 years, R/o village Mahka, Tehsil and District Janjgir-Champa (C.G.).
3. Sanjaya Kumar Banjare, S/o Basant Satnami, aged about 21 years, R/o village Tulsi, Tehsil and Distt.: Raipur (C.G.).
4. Ujjain Prasad Bandhe, S/o Tijau Satnami, aged about 32 years, R/o village Sakel, Tehsil Mungeli, District Bilaspur (C.G.).
5. Laxmi NarayanTandan, S/o Nemprasad, aged about 16 years, Minor, through guardian-mother Tulsi Devi Satnami, R/o village Jarhabhata-Manjhwapara, Bilaspur, Tehsil & Distt.: Bilaspur (C.G.).
6. M.A. Kadir, S/o M.A. Sattar, aged about60 years.
7. S.S. Khalid, S/o M.A. Kadir, aged about 30 years.
8. Nadim Pasha, S/o Sheikh Ahsan Pasha, aged about 42 years, 6-8 are residents of Mother Teresa Ward No.10, Talapara Road, Bilaspur, Tehsil and District Bilaspur.
9. Kamod, S/o Unknown, aged about 35 years, Contractor, R/o Tifra Basti, Tehsil and District Bilaspur (C.G.)

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Present:-
Shri K.A. Ansari, Advocate: For the petitioners.

Before: Hon'ble Shri L.C. Bhadoo, J.

ORDER

(Passed on 20th September, 2003)

1. The petitioners have preferred this writ petition under Article 227 of the Constitution of India by which they have challenged the order dated 1-7-2003 passed by the learned 3rd Additional District Judge, Bilaspur, in Misc. Appeal No. 10/2003 affirming the order dated 2-5-2003 passed by the 3rd Civil Judge, Class-II, Bilaspur in Civil Suit No. 91-A/03.

2. Facts leading to filing of this writ petition, in brief, are that Smt. Tijia Bai and 4 others who are respondents Nos. 1 to 5 in this petition filed a civil suit along with an application under Order 39 Rule 1 & 2 of the C.P.C. against the petitioners in the Court of 3rd Civil Judge, Class-II for permanent injunction in which the plaintiffs/respondents herein mentioned that on 18-4-2002 they purchased a piece of land ad measuring 0.16 acre, bearing Khasra No. 85/61 through registered sale deed from the legal heirs of Horilal and since purchase of land, they are in possession and their names have also been entered in the Revenue Record. The defendants in that suit/the petitioners herein have collected cement, iron bricks and sand for construction on the land in question, whereas, in fact, the defendants' land falls in Khasra No. 75/71 which is not near to the land in question. The Khasra number of the land in question is 85. They have also reported the matter to the police.

3. The undisputed facts are that Rampalat, Ram Mali and Horilal were three brothers and they were sons of Hardas Mourya and Hardas Mourya was the owner of the land of Khasra Nos. 75, 85 and others. The land of Hardas was partitioned among three sons namely, Rampalat, Ram Mali and Horilal. Horilal and Rampalat

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after partition of land sold their shares of land to different persons at different times. The petitioner No.1 herein/ the defendeant in the suit purchased piece of land from Rampalat ad measuring 0.13 ½ (6050 sq. ft.), out of Khasra No. 75/01 by a registered sale deed dated 25-1-96, the petitioner No.2 again purchased a piece of land ad measuring 0.09 acre i.e. 3800 sq. ft. adjacent to Khasra No. 75/01 through a registered sale deed dated 23-1-96. Thereafter in the year 2002 Smt. Ramshila Devi the widow of Horilal, Pramod and Purshottam (his sons) and daughters Rukmani Devi, Rajkumari and Meenakumari daughters of deceased Horilal got recorded their names in the Revenue Record regarding the left out land of Horilal and they sold the land to respondents in this petition and the plaintiff in the main suit ad measuring 0.16 acre out of Khasra No. 85/02 through a registered sale deed dated 3-5-2002.

4. A perusal of the order of the trial Court and the Appellate Court reveals that the demarcation of the land which was sold by Rampalat to the petitioners herein in the year 1996 and the land sold by the heirs of Horilal to the respondent No.1 and 5 is similar i.e. boundaries shown in both the sale deeds are similar and that became the matter of dispute. The case of the respondents herein/plaintiff in the suit is that the disputed land falls into Khasra No. 85 and belongs to them which they have purchased whereas, the case of the petitioners herein is that Horilal in his life time sold all his lands to various persons leaving behind the only portion of land which was reserved for passage/road and that land was still standing in the name of Holrilal and after the death of Horilal, the heirs of Horilal have sold that portion also.

5. Both the trial Court as well as the Appellate Court after hearing the parties and perusal of the sale deeds and other relevant documents reached to the conclusion that both the parties are claiming their title on the land in question and that too through a registered sale deed which requires a thorough scrutiny. After recording the evidence of the parties and in the circumstances the

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trial Court said that prima facie case is made out in favour of the plaintiffs. The balance of convenience and irreparable loss also lies in favour of granting injunction and maintaining status quo on the spot and in appeal the learned 3rd Additional District Judge also affirmed the order. It is settled law that the trial Court while considering the application under Order 39 Rule 1 & 2 before granting temporary injunction should satisfy that prima facie case is made out in favour of the plaintiff and balance of convenience and irreparable loss also lies in favour of the plaintiff, then and then only the injunction can be granted restraining the defendants and on appeal the Appellate Court is entitled to interfere with the order only when the Court reached to the conclusion that order granting temporary injunction is perverse, contrary to the facts or contrary to law. And in the ordinary course the Appellate Court is not required to interfere with the temporary injunction granted by the trial Court in a routine manner because the trial Court with whom the disputed matter is pending, after looking into the facts of the case and in order to maintain the status quo on the situation and also to ensure that during the pendency of the suit the situation should not be allowed to create which makes the filing of the suit meaningless and ultimately it becomes difficult for the trial Court to grant final relief. So in one form the grant of temporary injunction during the pendency of the suit is to prevent the defendants not to create a situation which make the trial Court difficult to grant the final relief.

6. In this case the appellate court also examined the orders and documents of the trial Court and reached to the conclusion that the order passed by the trial Court granting temporary injunction do not violate in the settled principles of law and ultimately dismissed the same.

7. Now, question comes before this Court as to what extent this Court can interfere with the order passed by the trial Court and the appellate Court i.e. against the concurrent finding recorded by the two courts, the jurisdiction of this Court to interfere with

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subordinate court while exercising jurisdiction under Article 227 of the Constitution of India is that the general principles governing the jurisdiction of the High Court under Article 227 of the Constitution of India are that the superintendence of the High Court under Article 227 even extent to the area where no appeal or revision lies to the High Court under the ordinary law. Under this jurisdiction power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the court or tribunal. Under Article 227 of the Constitution, the High Court can set-aside or ignore the findings of fact of an inferior court or tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the Court or tribunal has come to, or, in other words, it is a finding which was perverse in law. The High Court can interfere with the subordinate court's order only when the High Court after scrutinizing the record and order of the trial Court reaches to the conclusion that the trial Court/subordinate courts have exercised their jurisdiction in an erroneous assumption or in excess of jurisdiction has refused to exercise or whether the subordinate court's order shows that there is an error of law apparent on the face of the record. The subordinate court's order is without jurisdiction or against the principles of natural justice, where the violation of principles of natural justice are found the order is arbitrary or capricious exercise of authority or discretion and same is based on no material or a patent or flagrant error in procedure and ultimately if the order is allowed to exist that will result in manifest injustice and in this connection the Hon'ble Apex Court has held in the matter of **Surya Dev Rai Vs. Ram Chander Rai & Ors.** reported in **JT 2003 (6) SC 465** that :-

> **"Interlocutory orders passed by courts subordinate to the High Court against which the remedy of revision has been excluded are open to challenge and subject to certiorari and the supervisory jurisdiction of the High Court. In exercise of certiorari or**

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> supervisory jurisdiction the High Court will not covert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character. Where a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it has or the jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has resulted, the High Court may step in to exercise its supervisory jurisdiction."

and the Hon'ble Apex Court in the matter of **State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Ors.** reported in **JT 2003 (4) SC 605** held that:-

> "Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settle law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and Tribunal's within the bounds of their authority and not to correct mere errors. Further where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise"."

8. Now, if we examine the impugned orders in the light of the above principles of law, the facts of the present case, both the trial Court and the

Appellate Court have reached to the conclusion that the land in question upon which the petitioners herein /the defendants in the main suit claimed their title through a registered sale deed and the respondents herein/plaintiff in the main suit also claimed their title. After perusal of the sale deeds both the courts reached to the conclusion that the demarcation shows in both the sale deeds is almost similar and that refers to the disputed matters.

9. Therefore, after recording the evidence of the parties the Court will be able to decide that which party is legally entitled for the land in question and in order to maintain the status quo and preserve the land in same position the trial Court passed the temporary injunction, otherwise if the petitioners herein are allowed to raise the construction on the land then it will be difficult for the trial Court to pass final order.

10. Therefore, I do not find any illegality and infirmity in the impugned orders of the trial Court and the Appellate Court. The courts has neither exceeded their jurisdiction nor the order is contrary to any settled principles of law, therefore, there is no ground before this Court to interfere with the impugned orders under the extraordinary jurisdiction under Article 227 of the Constitution of India. This petition has no force and the same is liable to be dismissed and it is dismissed.

Sd/-
L.C. Bhadoo
Judge